



Print Form

FOR CLERK USE ONLY  
City Council  
Item No. 14

## CITY COUNCIL AGENDA FACT SHEET

City Attorney (Romero request)

Department

September 7, 2010

Requested Date

## 1. Request:

Council Approval

Information Only/  
Presentation

Other (specify)



Hearing



## 2. Requested Action:

CONSIDERATION OF ORDINANCE AMENDMENT FOR DEVELOPMENT APPLICATIONS: FEES AND SITE CONTROL

## 3. Fiscal Impact:

Revenue:

Increase



Source:

Decrease



Amount:

\$

Cost:

Increase



Source:

N/A

Decrease



Amount:

\$

Does Not Apply ☒

## 4. Reviewed By:

Finance Dept. on

By:

Comments:

City Attorney on

8-31-10

By:

J. Lyon

Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

## CLERK USE ONLY:

CITY COUNCIL DATE:

Action



Filing



Consent



Presentation



Hearing



Other(specify)



Reviewed by: City Clerk

City Manager

Date

Date

# **CITY COUNCIL AGENDA REPORT**

**SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO AMENDING SECTION 17.01.210, OF CHAPTER 17.01, TITLE 17 OF THE CALEXICO MUNICIPAL CODE REGARDING PERMITS AND APPLICATIONS FOR DEVELOPMENT; AND ADDING SECTIONS 16.04.050 AND 16.04.060 TO CHAPTER 16.04 OF TITLE 16 OF THE CALEXICO MUNICIPAL CODE REGARDING DEVELOPMENT APPLICATION REQUIREMENTS**

**AGENDA DATE:** September 7, 2010

**PREPARED BY:** Jennifer M. Lyon, City Attorney (at the request of Councilman Romero)

**APPROVED FOR AGENDA BY:** Victor Carrillo, City Manager

**RECOMMENDATION:** Consider report. If desired, introduce ordinance by title only, waive full reading of ordinance.

**FISCAL IMPACT:** This ordinance may help the City obtain full cost recovery for the processing of development applications and avoid waste of City resources.

## **BACKGROUND INFORMATION:**

Title 16, regarding Subdivisions, and Title 17, regarding Zoning, of the Calexico Municipal Code ("CMC") currently set out requirements and conditions necessary to obtain approval of applications for permits, development plans, and tentative maps. None of the requirements in the CMC address the issue of site control for a development application. Current development applications do require property owner *authorization* for the applicant to proceed with the development proposal but do not require that the applicant has a legal interest in the property.

If a developer or subdivider does not have control of a site by means of a legal or equitable interest, the City may experience a waste of resources, including staff review of applications, consideration by the Project Review Committee, processing and consultant fees, and the costs, resources, and time of setting Planning Commission and City Council hearings. Public funds and resources are at a premium in the City's current fiscal condition, therefore, the City has an interest in ensuring that such resources are used meaningfully.

Title 16, regarding Subdivisions, and Title 17, regarding Zoning, of the Calexico Municipal Code, also currently require applicants for development plans, permits, or

tentative maps to pay certain development processing fees to the City prior to setting a matter for hearing, action, or approval.

#### **DISCUSSION (Current consideration):**

Pursuant to California's Permit Streamlining Act (California Government Code ("GC") §65920 *et seq*) the City must compile a list or lists that specify the information that will be required for a development project. (GC §65940.) Once the application is complete the city cannot request any new or additional information that was not specified in the list or lists required by GC §65940.

The Subdivision Map Act (GC §66410 *et seq*) requires that only the ordinance, policies and standards in effect at the date the city has determined that the application for a tentative map is complete shall apply.

The attached Ordinance amends §17.01.210 of chapter 17.01 and adds §§ 16.04.050 and 16.04.060 to chapter 16.04 of the Calexico Municipal Code to require evidence that a owner, applicant, or subdivider holds a legal or equitable interest in the property that is subject to a permit, development plan, or tentative map, and to clarify that developers must submit a deposit at the application stage to cover development processing fees.

The proposed ordinance would give the owner, applicant, or subdivider notice of these requirements at the start of the process. Further, the City would have the ability to ensure orderly development of property and avoid a waste of public resources by requiring that an owner, applicant, or subdivider maintain legal or equitable control over the site that is the subject of a development plan, permit or map.

The proposed ordinance sets out the types of legal or equitable interests that will satisfy the condition for sufficient control of the site. The owner, applicant, or subdivider must submit proof in writing that they hold a legal or equitable interest in the subject property at the application stage and prior to setting a meeting of the Planning Commission and the City Council.

If this ordinance is approved by the Council, changes will be made to the City's development applications to reflect these requirements.

Attachments: Draft Ordinance

Ordinance No. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF CALEXICO AMENDING SECTION 17.01.210, OF CHAPTER 17.01, TITLE  
17 OF THE CALEXICO MUNICIPAL CODE REGARDING PERMITS AND  
APPLICATIONS FOR DEVELOPMENT; AND ADDING SECTIONS 16.04.050 AND  
16.04.060 TO CHAPTER 16.04 OF TITLE 16 OF THE CALEXICO MUNICIPAL CODE  
REGARDING DEVELOPMENT APPLICATION REQUIREMENTS**

**WHEREAS**, the Council ("Council") of the City of Calexico wishes to provide greater certainty in the development process, provide for the orderly development of property in the city, expedite the development process, and avoid waste of City resources, including, but not limited to, reviewing applications for completeness, consideration by the Project Review Committee, processing an application through various consultants, and time and costs associated with review by the Planning Commission and City Council; and

**WHEREAS**, the City is authorized to charge fees for the processing of development applications if the fees do not exceed the amount to provide the services; and

**WHEREAS**, the City is required to compile one or more lists that specify, in detail, the information that will be required from any applicant for a development project pursuant to California Government Code Section 65940, and allows the City to request that the applicant clarify or supplement any such original information after an application has been deemed complete pursuant to California Government Code Section 65944.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF CALEXICO HEREBY  
ORDAINS AS FOLLOWS:**

**SECTION 1:** Section 17.01.210 of Chapter 17.01 of the Code is hereby amended to read as follows:

**17.01.210. Permits and applications.**

A. Application Deposits. Concurrent with the submittal of an application for development and/or permit under this title, a fee shall be paid, in the amount prescribed in the Maximus Citywide Master User Fee Schedule to cover the costs incurred in the processing of the application. Additionally, a deposit shall be made, in the amount estimated if a consultant is necessary to assist the city in the processing of an application, including without limitation, consultant fees to perform CEQA review, costs for engineering services, costs for plan checks, and/or costs of any technical studies required by traffic or other technical consultants. In no case shall the application be set for hearing or action by the Planning Commission or City Council until such time as any balance for such application processing fees is paid in full. In the event the amount of

the deposit exceeds the actual amount of costs, the difference shall be refunded to the applicant.

B. Complete Applications. Any application for a permit or entitlement pursuant to this title must be accepted as complete for processing by the director of planning in order to initiate the official review process. Standard submittal requirements for each permit outlining the form and content of a complete application shall be established by the director. In addition to the standard submittal requirements, the director may request information specific to the permit or entitlement necessary for the complete analysis of an application. All required material, information and fees shall be provided by the applicant before the application is determined by the director to be complete for processing.

C. Proof that the Applicant Holds a Legal or Equitable interest in the Development Site Shall be Required. As one of the application submittal requirements, the property owner or the applicant, in the event the applicant is not the property owner, shall show written proof to the director of possession of a legal or equitable interest in the property that is to be the subject of a permit or entitlement pursuant to this title. No application for a permit or entitlement shall be deemed complete unless the legal or equitable interest is verified. Further, this requirement of having a legal or equitable interest in the property shall be maintained throughout permit processing and shall be verified prior to final action or the setting of any Planning Commission or City Council hearing on the permit or entitlement.

For purposes of this title, "Legal or equitable interest" shall mean possession of:

1. an estate in fee simple;
2. a joint tenancy;
3. a tenancy in common;
4. a leasehold estate;
5. an easement (if it encompasses the extent of development sought);
6. an option to purchase;
7. an option to lease;
8. a binding agreement or contract to exchange or transfer an interest in land;
9. an interest as a beneficiary of a trust;
10. an interest as a trustee with a power of sale;
11. any other real property interest(s) that the director, in consultation with the city attorney, determines is a legal or equitable interest in real property for purposes of this title.

D. Check for Completeness. Within thirty calendar days after the receipt of an application, the director shall review the application and determine if it is complete for processing and shall notify the applicant in writing of such determination. In addition to the standard submittal requirements, the director may request information specific to the permit or entitlement necessary for the complete analysis of an application.

E. Incomplete Applications. In the event an application is determined not to be complete, written notice shall be provided to the applicant specifying those portions of the application which are incomplete. Said notice shall also indicate the information and/or plans necessary to make the application complete. The applicant must supply the requested plans and/or information within sixty calendar days of the notice of incomplete filing. Upon receipt of the required items by the director, the information shall be reviewed for completeness and a determination of completeness shall be made within thirty calendar days. Once an application has been deemed complete, a decision shall be made pursuant to timelines set forth in state law.

**SECTION 2.** Section 16.04.050 of Title 16 of the Code is hereby added to read as follows:

#### **16.04.050 Processing Fees.**

Concurrent with the submittal of an application for development and/or permit under this title, a fee shall be paid, in the amount prescribed in the Maximus Citywide Master User Fee Schedule to cover the costs incurred in the processing of the application. Additionally, a deposit shall be made, in the amount estimated if a consultant is necessary to assist the city in the processing of an application, including without limitation, consultant fees to perform CEQA review, costs for engineering services, costs for plan checks, and/or costs of any technical studies required by traffic or other technical consultants. In no case shall the application be set for hearing or action by the Planning Commission or City Council until such time as any balance for such application processing fees is paid in full. In the event the amount of the deposit exceeds the actual amount of costs, the difference shall be refunded to the applicant.

**SECTION 3.** Section 16.04.060 of Title 16 of the Code is hereby added to read as follows:

#### **16.04.060 Site Control.**

As one of the application submittal requirements, for development and/or a permit under this title, the property owner or the applicant, in the event the applicant is not the property owner, shall show written proof to the director of possession of a legal or equitable interest in the property that is to be the subject of the development and/or permit pursuant to this title. No application for development and/or a permit shall be deemed complete unless the legal or equitable interest is verified. Further, this requirement of having a legal or equitable interest in the property shall be maintained throughout the development permit processing and shall be verified prior to final action or the setting of any Planning Commission or City Council hearing on the permit or entitlement.

For purposes of this title, "Legal or equitable interest" shall mean possession of:

1. an estate in fee simple;
2. a joint tenancy;
3. a tenancy in common;

4. a leasehold estate;
5. an easement (if it encompasses the extent of development sought);
6. an option to purchase;
7. an option to lease;
8. a binding agreement or contract to exchange or transfer an interest in land;
9. an interest as a beneficiary of a trust;
10. an interest as a trustee with a power of sale;
11. any other real property interest(s) that the director, in consultation with the city attorney, determines is a legal or equitable interest in real property for purposes of this title.

**SECTION 4.** This ordinance will take effect thirty (30) days after the date of its passage and adoption.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion hereof, irrespective of that fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 6.** The City Clerk shall certify to the adoption of this Ordinance and shall cause this ordinance, or a summary thereof, to be published as required by law.

**SECTION 7.** This ordinance was introduced on \_\_\_\_\_, 2010, and adopted on \_\_\_\_\_, 2010 and shall become effective 30 days after the date of adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote, to wit.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
John Moreno, Mayor  
City of Calexico, California

#### ATTEST AND CERTIFICATION

I hereby certify that this is a true and correct copy of Ordinance No. \_\_\_\_\_, which has been published pursuant to law.

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Lourdes Cordova, City Clerk